Supreme Court, U.S.
FILED
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No. _____

In The

Supreme Court of the United States

KADIATOU CAMARA, MIRIAM CAMARA, KHADY CAMARA,

Petitioners,

v.

ALBERTO GONZALES, Attorney General of the United States,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the level of individualized targeting that an asylum petitioner must show in order to demonstrate a reasonable fear of future persecution under 8 U.S.C. § 1158(b)(1) is reduced when the petitioner is a member of an oppressed or mistreated group, as the Fifth and Ninth Circuits have held (and contrary to the decision below)?

2. Whether an asylum petitioner's own plausible, detailed and internally consistent testimony, corroborated by State Department country reports, is sufficient to demonstrate a reasonable fear of future persecution, as the Second and Ninth Circuits have held (and contrary to the decision below)?

3. Whether a federal court of appeals must remand to the Board of Immigration Appeals when the BIA (or an Immigration Judge) finds an asylum petitioner entirely credible but inexplicably fails to credit the petitioner's testimony, as the First, Seventh and Tenth Circuits have held (and contrary to the decision below)?

PARTIES TO THE PROCEEDING

- All of the parties to the proceeding are named in the caption. Alberto Gonzales has been substituted for John Ashcroft, respondent in the Court of Appeals, per Supreme Court Rule 35.3.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kadiatou Camara is a politically-active member of the Ivory Coast's primary opposition party who sought asylum in this country after fleeing the Ivory Coast with her two minor daughters in fear for her life in December 2002. After an Immigration Judge ("IJ") and the Board of Immigration Appeals ("BIA") denied Ms. Camara's request for asylum or withholding of removal, the court below denied her petition for review on the basis of principles and reasoning that are contrary to the principles and reasoning applied by other courts of appeals in factually indistinguishable cases. This Court should grant the petition for a writ of *certiorari* to address this conflict in the circuits and to provide guidance to the courts of appeals in the thousands of asylum cases raising virtually identical issues.

OPINIONS BELOW

The opinion of the Third Circuit is unreported and appears in the Appendix at pages 1a–7a. The decisions and orders of the BIA and IJ appear in the Appendix at pages 8a–13a, and 14a–27a, respectively.

STATEMENT OF JURISDICTION

The Third Circuit entered judgment on September 30, 2004. On December 15, 2004, this Court granted petitioners an extension of the time within which to file the present

petition to February 27, 2005. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The primary statutory provisions involved, 8 U.S.C. § 1158, and 8 U.S.C. § 1231, are reproduced in the Appendix at pages 28a–40a, and 41a–67a, respectively.

STATEMENT OF THE CASE

Petitioner Kadiatou Camara is an activist in the Ivory Coast's main opposition party and a member of the Dioula ethnic group, which the State Department has identified as a group targeted for violent suppression by government forces. Ms. Camara fled the Ivory Coast when, after her estranged husband threatened to denounce her to government authorities for her opposition party activities, she was pursued on two occasions by the government's most brutal paramilitary force. At an asylum hearing before an IJ, Ms. Camara presented testimony and documentary evidence in support of her asylum application. The IJ found Ms. Camara's testimony to be credible, direct, specific and truthful, as well as consistent with her written statement. The documentary evidence that she offered corroborated her testimony and was authenticated as genuine by a government forensic lab. Finally, Ms. Camara presented

unrebutted country reports detailing the political turmoil in the Ivory Coast, including reports from the State Department of the United States, which documented the persecution of opposition party activists.

Despite the overwhelming evidence in support of her asylum application, the IJ denied Ms. Camara's request for asylum or withholding of removal. 17a-27a. The BIA affirmed the denial in a one-paragraph order. 8a-13a. Ms. Camara and her daughters petitioned for review before the United States Court of Appeals for the Third Circuit pursuant to 8 U.S.C. §§ 1252(a)(1) & (b)(9). In an unpublished opinion issued September 30, 2004, that court denied the Camaras' petition. 1a-7a.[2]

Although the undisputed evidence presented at the IJ hearing demonstrated that Ms. Camara was a member of, and an activist in, a targeted group – the Ivory Coast's primary opposition party – the Third Circuit declined to find that the level of individualized targeting she was required to show in order to demonstrate a reasonable fear of future persecution under 8 U.S.C. § 1158(b)(1) was reduced. In addition, the court declined to find that Ms. Camara's plausible, detailed and internally consistent

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[2] The Third Circuit granted the Camaras' motion for a stay of removal pending resolution of their petition for review and also granted their subsequent motion for a stay of its mandate pending disposition of the present petition for a writ of *certiorari*.

testimony, corroborated by State Department country reports and unrebutted by any evidence presented by the government, was sufficient to demonstrate that her fear of future persecution was reasonable. Finally, the Third Circuit found that substantial evidence supported the IJ's decision not to credit Ms. Camara's testimony, despite the IJ's finding that her testimony was entirely credible.

REASONS FOR GRANTING THE WRIT

I. *CERTIORARI* SHOULD BE GRANTED TO RESOLVE THE CONFLICT AMONG THE CIRCUITS AS TO WHETHER THE LEVEL OF INDIVIDUALIZED TARGETING THAT AN ASYLUM PETITIONER MUST SHOW IN ORDER TO DEMONSTRATE A REASONABLE FEAR OF FUTURE PERSECUTION IS REDUCED WHEN THE PETITIONER IS A MEMBER OF AN OPPRESSED OR MISTREATED GROUP.

The Third Circuit's refusal to apply a lower standard for demonstrating a reasonable fear of future persecution to petitioners such as Ms. Camara who are members of targeted groups is contrary to holdings of the Fifth and Ninth Circuits, as well as to the immigration regulations.

In *Eduard v. Ashcroft*, 379 F.3d 182 (5th Cir. 2004), the Fifth Circuit held that an IJ "committed legal error" in requiring asylum petitioners "to show that they would be

singled out for persecution upon return" to their home country, where the petitioners were members of a persecuted group. *Id.* at 192. The court in *Eduard* relied on 8 C.F.R. 208.13(b)(2)(iii), which provides that:

> In evaluating whether the applicant has sustained the burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if:
>
> > (A) The applicant establishes that there is a pattern or practice in his or her country of . . . persecution of a group of persons similarly situated to the applicant on account of . . . political opinion; and
> >
> > (B) The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable.

Shortly after the Fifth Circuit's decision, the Ninth Circuit in *Sael v. Ashcroft*, 386 F.3d 922 (9th Cir. 2004), similarly held that where a petitioner is a member of a disfavored group, that petitioner "must demonstrate a 'comparatively low' level of individualized risk in order to prove that she has a well-founded fear of future persecution." *Id.* at 927; *see also Malty v. Ashcroft*, 381 F.3d 942, 948 (9th Cir. 2004) (reaffirming prior holding that "the

level of individualized targeting that a petitioner must show is decreased when he is a member of a mistreated group").

Significantly, in a recent decision post-dating its decision in the present case, the Third Circuit took issue with the Ninth Circuit's decision in *Sael*, expressly "disagree[ing] with the Ninth Circuit's use of a lower standard for individualized fear absent a 'pattern or practice' of persecution" and rejecting "the establishment of a 'disfavored group' category." *Lie v. Ashcroft*, --- F.3d ---, --- n.4, 2005 U.S. App. LEXIS 1899, at *18 n.4 (3d Cir. Feb. 7, 2005). Thus, the Third Circuit has explicitly reaffirmed the circuit split implicit in its decision in the present case.

II. *CERTIORARI* SHOULD BE GRANTED TO RESOLVE THE CONFLICT AMONG THE CIRCUITS AS TO WHETHER AN ASYLUM PETITIONER'S OWN PLAUSIBLE, DETAILED AND INTERNALLY CONSISTENT TESTIMONY, CORROBORATED BY STATE DEPARTMENT COUNTRY REPORTS, IS SUFFICIENT TO DEMONSTRATE A REASONABLE FEAR OF FUTURE PERSECUTION.

The Third Circuit's conclusion that credible and specific testimony presented by Ms. Camara was insufficient to demonstrate a reasonable fear of future persecution directly conflicts with the holdings of a number of other circuit courts that the same type of credible and specific testimony is precisely the type of evidence that establishes that a

petitioner's fear of future persecution is reasonable. *See, e.g., Malty v. Ashcroft*, 381 F.3d 942, 948 (9th Cir. 2004); *Abankwah v. INS*, 185 F.3d 18, 24-26 (2d Cir. 1999) (finding that petitioner had proven that her fear of future persecution was reasonable through "her own plausible, detailed, and internally consistent testimony," particularly "in light of the general conditions" in her home country, set forth in State Department reports).

The Third Circuit's conclusion in this case, which follows similar holdings of that court in other recent cases, *see, e.g., Shardar v. Ashcroft*, 382 F.3d 318, 323 (3d Cir. 2004), perpetuates a circuit split regarding the necessary evidence that asylum petitioners must present to prove a reasonable fear of future persecution. In the Third Circuit, a petitioner's credible and specific testimony is not sufficient to demonstrate a reasonable fear of future persecution, while in other circuits, the same testimony is sufficient. Particularly in light of the fact that a petitioner's own testimony is frequently the only evidence available to a fleeing asylum applicant to support his or her claim of a fear of future persecution, this Court should grant the petition for a writ of *certiorari* in order to resolve the circuit conflict exacerbated by the Third Circuit in this case.

III. *CERTIORARI* SHOULD BE GRANTED TO RESOLVE THE CONFLICT AMONG THE CIRCUITS AS TO WHETHER A COURT OF APPEALS MUST REMAND TO THE BOARD OF IMMIGRATION APPEALS WHEN THE BIA (OR AN IMMIGRATION JUDGE) FINDS AN ASYLUM PETITIONER ENTIRELY CREDIBLE BUT INEXPLICABLY FAILS TO CREDIT THE PETITIONER'S TESTIMONY.

A number of courts have found fault with an IJ's (or BIA's) decision that is internally inconsistent in that a petitioner is found credible but the IJ (or BIA) fails to credit his or her testimony. These courts have held that in such a situation, remand for clarification is required. *See, e.g., Diallo v. Ashcroft*, 381 F.3d 687, 699 (7th Cir. 2004); *Wiransane v. Ashcroft*, 366 F.3d 889, 898 (10th Cir. 2004); *El Moraghy v. Ashcroft*, 331 F.3d 195, 205 (1st Cir. 2003). As the Seventh Circuit noted in *Diallo*, "This type of confusion over the immigration judge's credibility determination . . . warrants a remand to untangle the basis for the immigration judge's decision." *Diallo*, 381 F.3d at 699; *see also Guchshenkov v. Ashcroft*, 366 F.3d 554, 559 (7th Cir. 2004) ("A remand is required because the immigration judge's analysis of their application is unreasoned. She 'determined that the respondent is basically credible; however, his testimony is not inherently persuasive.' We do not understand what this means.").

By contrast, as evidenced by its decision in this case, the Third Circuit is willing to accept an IJ's faulty reasoning, in which an IJ finds a petitioner's testimony "entirely credible," but nonetheless discredits all of her testimony regarding her reasonable fear of persecution on account of her political activism. This Court should resolve this circuit split that the Third Circuit has perpetuated.

* * * *

The federal courts of appeals adjudicate thousands of petitions for review challenging denials of asylum or requests for withholding of removal every year. For reasons of both judicial efficiency and basic fairness, the rules governing such adjudications should be uniform throughout the nation. The grant or denial of a petition for review, which in most cases provides the final appeal for persons fleeing persecution in distant lands, should not turn on the fortuity of the location of a detention center in which an immigrant is held pending disposition of his or her petition. The Camaras' petition for review was denied because the Third Circuit declined to follow certain principles adopted by the First, Second, Fifth, Seventh, Ninth and Tenth Circuits, any one of which almost certainly would have led to a different result in the present case. This Court should grant the petition for writ of *certiorari* to the Third Circuit to resolve these numerous circuit conflicts on fundamental issues of immigration law.

CONCLUSION

The Court should grant the petition for a writ of *certiorari*.

Respectfully submitted,

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Dated: February 28, 2005.

September 30, 2004 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-1561

KADIATOU CAMARA;
MIRIAM CAMARA;
KHADY CAMARA,

Petitioners

v.

JOHN ASHCROFT, Attorney General
of the United States,

Respondent

ON PETITION FOR REVIEW OF ORDERS OF THE
BOARD OF IMMIGRATION APPEALS

(Nos. A95-825-392, A95-825-393, A95-825-394)

Argued September 15, 2004

Before: ALITO, AMBRO, and FISHER, Circuit Judges

(Opinion Filed: September 30, 2004)

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OPINION OF THE COURT

PER CURIAM:

Kadiatou Camara and her two daughters[1] petition for review of final orders of the Board of Immigration Appeals (the "Board") denying their applications for asylum and withholding of removal. Because we write solely for the parties, we do not recite the underlying facts, which are set forth in the order of the Immigration Judge ("IJ") dated August 8, 2003. We conclude that the Board's decision was supported by substantial evidence, and we deny the petitions.

I.

We review the Board's denial of an application for asylum to determine if it is supported by substantial

---

[1] We assume that Miriam (spelled "Mariam" in several places in the record) and Khady Stephanie Camara may both file applications derivative of their mother's application, despite our doubts whether Khady, who was informally adopted by Kadiatou, qualifies as a derivative applicant. *See* Immigration and Nationality Act § 208(b)(3)(A), 8 U.S.C. § 1158(b)(3)(A) (2000). Since the record contains no evidence that Miriam and Khady would be "otherwise eligible for asylum," id., we focus our energies on Kadiatou's application, assuming that the success of Miriam's and Khady's applications depends on hers.

evidence. *Dia v. Ashcroft*, 353 F.3d 228, 247 (3d Cir. 2003) (en banc). Under this standard, the decision of the Board may be reversed "only if the evidence presented by [the applicant] was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed." *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992). In other words, "the BIA's finding must be upheld unless the evidence not only supports a contrary conclusion, but compels it." *Abdille v. Ashcroft*, 242 F.3d 477, 483-84 (3d Cir. 2001).

The Attorney General may grant asylum to an alien who demonstrates that she is unable or unwilling to return to her native land because of a "well-founded fear" of persecution. *See* Immigration and Nationality Act (INA) §§ 101(a)(42)(A), 208(b)(1), 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1) (2000); 8 C.F.R. § 208.13(b) (2004); *Abdille*, 242 F.3d at 482. A "well-founded fear" must be both subjectively genuine and objectively reasonable. *Zubeda v. Ashcroft*, 333 F.3d 463, 469 (3d Cir. 2003). We have held that "persecution" includes "threats to life, confinement, torture, and economic restrictions so severe that they constitute a real threat to life or freedom," but does not amount to "all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional." *Lukwago v. Ashcroft*, 329 F.3d 157, 168 (3d Cir. 2003) (internal quotation marks and citations omitted).

Camara argues that the Board's decision was not supported by substantial evidence because her testimony and the country reports she submitted both showed that

members of her political party, the RDR, were being targeted for violence and detention by the country's ruling government. She further testified that she feared for her life after the government's "anti-riot brigade" (the "BAE") had twice visited her house in the middle of the night. The IJ deemed this testimony "above reproach," finding it "credible, persuasive, and specific." Administrative Record ("A.R.") at 72. Since Camara testified that her life was in danger and the IJ found this testimony credible, she argues that a reasonable factfinder would be compelled to find that she had a "well-founded fear" of persecution.

We disagree. It does not follow from a finding of credibility that Camara was eligible for asylum based solely on her testimony. Testimony may want for more than credibility. A reasonable factfinder may credit a witness yet still discount her testimony as speculative or hearsay, and even testimony without these limitations must meet the basic requirement of alleging facts that would entitle the applicant to relief. The BIA's decisions have distinguished between claims that fail for lack of credibility and claims that fail because testimony, while credible, failed to satisfy an applicant's burden of proof. *See Abdulai v. Ashcroft*, 239 F.3d 542, 551 n.6 (3d Cir. 2001) (citing *In re S-M-J*, 21 I. & N. Dec. 722 (BIA 1997)).

Camara's testimony, if credited, may compel the conclusion that she genuinely feared persecution, but it does not compel the conclusion that this fear was reasonable.

Although she testified that government agents would arrest and kill her because of her membership in the RDR, *see* A.R. at 155, she offered no evidence as to how commonly RDR members were persecuted or whether she was similarly situated with those who had been. The State Department's 2002 Country Report on Cote d'Ivoire actually suggests that a relatively small number of people had been targeted. *See* A.R. at 379-80 (reporting that in a country with a population of 16 million, "more than 200 extrajudicial killings" and "several" disappearances had occurred). While these facts might permit the conclusion that Camara's fear of persecution was reasonable, we do not believe they compel it.

Nor do we believe this conclusion was compelled by Camara's testimony about the BAE. According to her, BAE agents had twice arrived on her doorstep in the middle of the night and demanded entry. A.R. at 148-49. She also testified, however, that BAE agents had done the same thing to others in her neighborhood who belonged to the RDR, *see* A.R. at 149, yet she offered no evidence that any of them had suffered violence at the BAE's hands. As the IJ observed, the BAE agents always left her house without incident, even though Camara was a well-known RDR member who may have been denounced by her husband. *See* A.R. at 72. Based on this testimony, a reasonable factfinder could conclude that her fear, though genuine, was not reasonable. The

decision to deny her application was thus supported by substantial evidence.

II.

Since the denial of Camara's asylum application was supported by substantial evidence, it follows that the Board's decision to deny withholding of removal under the INA must be upheld as well. *See Lukwago*, 329 F.3d at 182 ("If [petitioner] is unable to satisfy the standard for asylum, he necessarily fails to meet the standard for withholding of removal under INA § 241(b)(3)."). We also believe a reasonable factfinder could conclude that Camara had failed to show that it was "more likely than not" that she would be tortured if removed to Cote d'Ivoire. *See id.* at 182-83. The Board's decision to deny her application for withholding of removal under the U.N. Convention Against Torture therefore must be upheld.

III.

After thoroughly examining the record and exploring the issues at oral argument, we conclude that substantial evidence supports the Board's decision to deny the petitioners' applications for asylum and withholding of removal. The petition for review is accordingly denied.

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
FALLS CHURCH, VIRGINIA 22041

DECISION OF THE BOARD OF IMMIGRATION APPEALS

In re: Camara, Kadiatou	:	File: A95-825-392-YORK
In Removal Proceedings	:	
Appeal	:	**Feb. 6, 2004**

On Behalf of Respondent: Gansallo, Ayodele, Esquire
On Behalf of DHS: William E. Lore, Assistant Chief Counsel

ORDER

PER CURIAM. The respondent has appealed from the Immigration Judge's decision dated August 08, 2003. We have reviewed the record and we agree that the respondent failed to meet her burden of establishing past persecution or a well-founded fear of persecution on account of one of the statutorily protected grounds, or that it is more likely than not that she will be persecuted or subjected to torture upon her return to the Ivory Coast. See section 101(a)(42)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42)(A); INS v. Elias-Zacarias, 502 U.S. 478 (1992); INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); INS v. Stevic, 467 U.S. 407 (1984); 8 C.F.R. § 1208.16(c)(2); Matter of Y-L-, A-G-, & R-S-R, 23 I&N Dec. 270 (A.G. 2002); Matter of S-V-, 22 I&N Dec.

1306 (BIA 2000). The respondent has presented no arguments on appeal which persuade us that this decision should be disturbed. Accordingly, the appeal is dismissed.

/s/ Roger A. Paul
FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
FALLS CHURCH, VIRGINIA 22041

DECISION OF THE BOARD OF IMMIGRATION APPEALS

In re: Camara, Mariam	:	File: A95-825-393-YORK
In Removal Proceedings	:	
Appeal	:	**Feb. 6, 2004**

On Behalf of Respondent: Gansallo, Ayodele, Esquire
On Behalf of DHS: William E. Lore, Assistant Chief Counsel

ORDER

PER CURIAM. The respondent has appealed from the Immigration Judge's decision dated August 08, 2003. We have reviewed the record and we agree that the respondent failed to meet her burden of establishing past persecution or a well-founded fear of persecution on account of one of the statutorily protected grounds, or that it is more likely than not that she will be persecuted or subjected to torture upon her return to the Ivory Coast. See section 101(a)(42)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42)(A); INS v. Elias-Zacarias, 502 U.S. 478 (1992); INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); INS v. Stevic, 467 U.S. 407 (1984); 8 C.F.R. § 1208.16(c)(2); Matter of Y-L-, A-G-, & R-S-R,

23 I&N Dec. 270 (A.G. 2002); Matter of S-V-, 22 I&N Dec. 1306 (BIA 2000). The respondent has presented no arguments on appeal which persuade us that this decision should be disturbed. Accordingly, the appeal is dismissed.

/s/ Roger A. Paul
FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
FALLS CHURCH, VIRGINIA 22041

DECISION OF THE BOARD OF IMMIGRATION APPEALS

In re: Camara, Khady Stephanie	:	File: A95-825-394-YORK
In Removal Proceedings	:	
Appeal	:	**Feb. 6, 2004**

On Behalf of Respondent: Gansallo, Ayodele, Esquire
On Behalf of DHS: William E. Lore, Assistant Chief Counsel

ORDER

PER CURIAM. The respondent has appealed from the Immigration Judge's decision dated August 08, 2003. We have reviewed the record and we agree that the respondent failed to meet her burden of establishing past persecution or a well-founded fear of persecution on account of one of the statutorily protected grounds, or that it is more likely than not that she will be persecuted or subjected to torture upon her return to the Ivory Coast. See section 101(a)(42)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42)(A); INS v. Elias-Zacarias, 502 U.S. 478 (1992); INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); INS v. Stevic, 467 U.S. 407

(1984); 8 C.F.R. § 1208.16(c)(2); Matter of Y-L-, A-G-, & R-S-R, 23 I&N Dec. 270 (A.G. 2002); Matter of S-V-, 22 I&N Dec. 1306 (BIA 2000). The respondent has presented no arguments on appeal which persuade us that this decision should be disturbed. Accordingly, the appeal is dismissed.

/s/ Roger A. Paul
FOR THE BOARD

August 8, 2003

IMMIGRATION COURT
3400 Concord Road, Suite 2
York, PA 17402

In the Matter of	:	Case No.: A95-825-392
CAMARA, KADIATOU	:	
Respondent	:	In Removal Proceedings

A. Gansallo, Esquire

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on August 8, 2003.

This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in this case.

[X] The respondent was ordered removed from the United States to _____ § 541(b)(1)(A) or in the alternative to _____.

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ alternative to _____.

[ ] Respondent's application for voluntary departure was granted until _____ upon posting a bond in the

amount of $_____ with an alternate order of removal to _____.

[X] Respondent's application for asylum was ( ) granted (X) denied ( ) withdrawn.

[X] Respondent's application for withholding of removal was ( ) granted (X) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A(b)(1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn or ( ) other.

[ ] Respondent's application for adjustment of status under section ____ of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $_____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[X] Other: CAT denied.

Date: September 8, 2003.

Appeal: ( ) Waived (X) Reserved

Appeal Due by:_____

/s/ Walter A. Durling
WALTER A. DURLING
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
YORK, PENNSYLVANIA

IN THE MATTER OF:	)	IN REMOVAL PROCEEDINGS
CAMARA, Kadiatou (lead)	)	
CAMARA, Mariam	)	File # A 95 825 392
CAMARA, Khady Stephanie	)	A 95 825 393
	)	A 95 825 394
Respondents	)	
	)	**August 8, 2003**

GROUNDS: Section 212(a)(7)(A)(i)(I)

ON BEHALF OF RESPONDENTS	ON BEHALF OF THE BUREAU
Ayodele Gansallo, Esq. HIAS and Council Migration Service 2100 Arch Street, 3rd Floor Philadelphia, PA 19103	William Lore Assistant District Counsel

WRITTEN DECISION AND ORDER

The respondent is a 49-year-old married female alien, native and citizen of the Ivory Coast, who arrived with her two minor daughters[1] at Newark International Airport on

[1] These two daughters, Mariam, age 14, and Stephanie, age 10, are derivative asylees on their mother's asylum application. It is noted that Stephanie is not the respondent's biological daughter but was

December 2, 2002. She was placed into removal proceedings under section 240 of the Immigration and Nationality Act for seeking admission to the United States without a valid unexpired immigrant visa or other valid documents in this regard. At a master calendar proceeding the respondent, through counsel, has conceded the singular ground of removal under section 212(a)(7)(A)(i)(I). The merits hearing in this matter was held on July 7, 2003, at the Bureau's Berks County Family Care Facility, Leesport, PA. At that time the respondent provided testimony and documentary evidence in support of her application for asylum, all of which have been considered whether cited in this decision or not.

The respondent testified that she was born in Adjame, Ivory Coast, in the Malinke tribal group and raised as a Muslim. She married her husband, Barnbiougou, in January 1980. She has six children four of whom remain with her husband in the Ivory Coast. Stephanie is an "adopted" daughter. The primary focus of this claim is the respondent's past political activities in her native country. In this regard, she testified that she was an active member of the Rally for Republicans (hereinafter "RDR"), becoming a member in 1994. The respondent explained that the RDR was an opposition political party to the ruling government

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taken in by the respondent in 2000 when Stephanie's mother died and her father, the respondent's stepson, could not care for her. The respondent testified that "adopting" such children in this manner in her culture and her religion is commonplace. I will consider Stephanie as a legitimate derivative applicant in this case.

political party, the FPI. She was responsible for recruiting women into the party and was elected chairwoman of her party affiliate. Additionally, the respondent assisted in organizing monthly political meetings held in the homes of different members, including the respondent's home.

The respondent's husband, however, was a member of another political party, the PDCI,[2] which also was an anti-government political party but which was not in agreement with the RDR with which it apparently had open disagreements. In any event, the respondent did not experience any problems with her government until November 2002 following the failed coup attempt earlier in September.

By way of history, the respondent explained that the 2000 national elections resulted in the election of Laurent Gbagbo, an election which the RDR chose not to participate because of the government's refusal to permit the RDR presidential candidate from being balloted as a candidate. As a result, there were many peaceful public demonstrations over the government's flagrant misconduct in this regard and in which the respondent participated. These demonstrations were forcefully interrupted by the police who shot into the crowds injuring and killing many,

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[2] The respondent testified that she initially had been a member of the PDCI but resigned her membership after the party became violent and intolerant of its political opponents.

including RDR members. Because the respondent was a trained midwife, she provided medical help to those injured.

The respondent contends that she had a difficult marriage where her husband, a retired auto mechanic, was physically abusive and who filed for divorce from her in November 2001. According to the respondent, when she voiced her objection to her husband over the divorce, he threatened to report her to the government for taking part in the demonstrations and for actively opposing the government. It was not long after the latest arguments over the divorce and after her husband's threats that the paramilitary Anti-Riot Police (hereinafter the "BAE") appeared at their door late one night in November 2001, demanding that she come out. The respondent testified that she did not answer the door nor turn on the lights in the house. After awhile the police left. The following morning the respondent's neighbors informed her that the BAE had visited other houses as well. The second visit by the BAE occurred two weeks later, again late at night. This time her eldest daughter awoke but they did not answer the door nor respond in any manner. Again the police left shortly thereafter.

Following this second visit the respondent left her house with Mariam and stayed with relatives and friends, fearful that the BAE would arrest and persecute her.[3]

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[3] The respondent explained that she did not fear for the safety of

Approximately one week later the respondent left her country with the two children and flew to the United States. The respondent admitted that she had visited the United States seven times since 1998. In doing so she would bring one or more of her children with her, but never her husband, and stayed with a cousin, Fabrice, (*see* exhibit 6 tab 2), whom she knew from childhood. The respondent recounted the death of her cousin Yerefe Camara (*see* exhibits 8 and 9). Upon her arrival in the United States she immediately informed immigration inspectors of her fear of returning to the Ivory Coast, which is essentially corroborated by the "airport statement" (*see* exhibit 4 tab B).

While acknowledging that the RDR maintained power in the northern part of the Ivory Coast where Muslims form the greater part of the party, and where she has relatives still residing, she lived in the southern part of the country where the RDR is much more subjected to violence and intimidation. According to the respondent, one cannot easily move or visit the northern part of her country given the numerous military roadblocks which effectively insulate the north from the south. In any event, the respondent maintains that she will likely be subjected to persecution upon her return since the BAE had twice looked for her and

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her children, but that Mariam was too young for her older children to adequately care for.

where membership in the RDR often evokes a violent response from the government.

To establish a well-founded fear of persecution, an asylum applicant must demonstrate that the persecution is "on account of" one of the statutorily-protected grounds set forth at section 101(a)(42)(A) of the Act; i.e., race, religion, nationality, membership in a particular social group, or political opinion. Although an applicant need not show conclusively why persecution occurred or may occur, *Matter of S-P*, 21 I&N Dec. 486 (BIA 1996), she must present some evidence of motive on the part of the persecutor, either direct or circumstantial, to demonstrate his eligibility for the relief she is seeking. *INS v. Elias-Zacarias*, 502 U.S. 478 (1992); *Balasubramanrim v. INS*, 143 F.3d 157 (3rd Cir. 1998); *Senathirajah v. INS*, 157 F.3d 210 (3rd Cir. 1998). In this regard, the asylum applicant must produce sufficiently detailed evidence and testimony from which it is reasonable to believe that the harm she fears, or the harm already suffered, is encompassed within one of the statutorily-protected grounds as set forth above. If a reasonable person in the same or similar circumstances would fear persecution, the asylum applicant may have presented sufficient evidence to be granted such relief as a matter of discretion. *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

To establish eligibility for withholding of removal in accordance with section 241(b)(3) of the Act, the applicant must establish a "clear probability" of persecution on one or

more of the above-delineated grounds. An alien who meets this standard must be granted withholding of removal, which is mandatory unless the alien is statutorily precluded from such relief. It has been held that the burden of proof is higher to establish eligibility for withholding of removal than for asylum, and that if the alien cannot establish asylum eligibility, she therefore cannot meet eligibility for withholding of removal. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *Matter of Mogharrabi, supra.*

Underlying such applications is the requirement that the applicant's testimony be credible, persuasive, and specific, rather than general or vague. *Balasubramanrim v. INS, supra; Senathirajah v. INS, supra; Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In this regard, I found the respondent's testimony to be above reproach. He answered all questions directly, and I could discern no attempt by the respondent at any time to mislead. His testimony was specific and conformed to that of his written statement.

After full consideration of this claim, I must concur with Bureau counsel that, at least, this claim is inflated. The background evidence in this case portrays the BAE as a rather violent police organization which targets political opponents of the government with violence. And yet the respondent testified that twice the BAE appeared at her doorstep late at night demanding to enter and they left merely by the respondent remaining silent and not turning on the lights inside the house. And while the respondent

alleges that her husband probably reported her to the police as a political opponent, it is noted that her husband, too, is a political opponent, albeit maintaining membership in a different political party. In any event, when asked whether she had confronted her husband concerning whether he had reported her to the police, the respondent replied that she had not.

Importantly, upon questioning by Bureau counsel, the respondent could only explain the aims of the RDR in the most general terms, and could not denote the three basic aims of the RDR which appear on their official logo. This from a person ostensibly a member of the RDR for the past nine years and who held an elected position within the party. Moreover, the respondent testified that she elected to remain in her home for the two weeks following the first nighttime visit from the BAE, figuring they would not return. But why? The BAE is known to actively seek out RDR militants, and if, as she suspects, her husband reported her to the BAE, I cannot understand why the respondent believed that the BAE would not return to her house.[4]

One other factor is important. That is, the respondent last returned to the Ivory Coast from the United States

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[4] Of course we also have the respondent's written statement (at para. 18) stating that she remained in her house until the end of November following the second visit by the BAE, but she then testified that she left her home the day after the second visit by the BAE and went into hiding for one week. This discrepancy has not been explained.

approximately two weeks following the rebellion in September 2002 which the government blamed on the RDR. And while the respondent explained that it was safer to do so rather than later, I must question this bit of wisdom. How would the respondent know that it was safe to return and travel about a mere two weeks following the rebellion? She never offered an explanation in this regard. And in what manner would it have been safer? One would naturally expect that a government which had been attacked from within would be most vigilant immediately following the violence, not later.

The serious human rights violations of the present government in the Ivory Coast cannot be denied, which is otherwise documented in this record. But the burden of proof lies with the respondent. It is in this aspect that I find this claim lacking. If the BAE showed up on the respondent's doorsteps on those two nights, we do not know the reason. More importantly, the BAE as described in this regard by the respondent, appeared to have acted in a manner inconsistent with its known propensity for violence against political opponents of the government. Further, the actions of the respondent immediately after these incidents, if in fact they occurred, do not appear to be reasonable, and her testimony conflicts in at least one aspect with that of her written statement. Moreover, the respondent's testimony concerning her knowledge of the RDR proved to be vague, general, and inaccurate. I cannot overlook the weaknesses in

this claim despite the more atrocious aspects of her government. I must find that the respondent has failed to establish either a well-founded fear of persecution for asylum under section 208(a), or a clear probability of persecution for withholding of removal under section 241(b)(3).

Finally, the record does not support a finding that "it is more likely than not" that the respondent would suffer torture upon her return to the Ivory Coast. *See* 8 C.F.R. § 208.16(c)(2). Torture does occur in the Ivory Coast, which would otherwise be consistent with known background country conditions. But the respondent departed with a valid passport and there's no reliable evidence her government is actively seeking her. Moreover, there is no evidence that members of the RDR returning from abroad are singled out for torture upon their return. To make an alternate finding would be to engage in speculation. The following orders are hereby entered.

ORDER: The respondent's application for asylum under section 208(a) and withholding of removal under section 241(b)(3) is denied.

FURTHER ORDER: The respondent's claim under Article 3 of the U.N. Torture Convention is denied.

FURTHER ORDER: The respondent is hereby ordered removed from the United States pursuant to section 241(b)(1)(A) of the INA.

/s/ Walt Durling
WALT DURLING
Immigration Judge

August 8, 2003

8 U.S.C. § 1158. Asylum

(a) Authority to apply for asylum

(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

(2) Exceptions

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or

equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for granting asylum.

(1) In general

The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(2) Exceptions.

(A) In general

Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime,

constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is inadmissible under subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or removable under section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children

(A) In general

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E)) of this title of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) Continued classification of certain aliens as children

An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending.

(c) Asylum status

(1) In general

In the case of an alien granted asylum under subsection (b), the Attorney General—

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Termination of asylum

Asylum granted under subsection (b) does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that—

(A) the alien no longer meets the conditions described in subsection (b)(1) owing to a fundamental change in circumstances;

(B) the alien meets a condition described in subsection (b)(2);

(C) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in

which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or deportability under section 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the Attorney General in accordance with sections 1229a and 1231 of this title.

(d) Asylum procedure

(1) Applications

The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a), of this section. The Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the Attorney General.

(2) Employment

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

(3) Fees

The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 1159(b) of this title. Such fees shall not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installments. Nothing

in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.

(4) Notice of privilege of counsel and consequences of frivolous application

At the time of filing an application for asylum, the Attorney General shall—

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) Consideration of asylum applications

(A) Procedures

The procedure established under paragraph (1) shall provide that—

(i) asylum cannot be granted until the identity of the applicant has been checked against

all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(iv) any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 1229a of this title, whichever is later; and

(v) in the case of an applicant for asylum who fails without prior authorization or in the absence of exceptional circumstances to appear for an interview or hearing, including a hearing under

section 1229a of this title, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) Additional regulatory conditions

The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this Chapter.

(6) Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Chapter, effective as of the date of a final determination on such application.

(7) No private right of action

Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(June 27, 1952, c. 477, Title II, ch. 1, § 208, as added March 17, 1980, P.L. 96-212, Title II, § 201(b), 94 Stat. 105, and amended Nov. 29, 1990, P.L. 101-649, Title V, § 515(a)(1), 104 Stat. 5053; Sept. 13, 1994, P.L. 103-322,

Title XIII, § 130005(b), 108 Stat. 2028; Apr. 24, 1996, P.L. 104-132, Title IV, § 421(a), 110 Stat. 1270; Sept. 30, 1996, P.L. 104-208, Div. C, Title VI, § 604(a), 110 Stat. 3009-690.)

8 U.S.C. § 1231. Detention and removal of aliens ordered removed

(a) Detention, release, and removal of aliens ordered removed

(1) Removal period

(A) In general

Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) Beginning of period

The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) Suspension of period

The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

(2) Detention

During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

(3) Supervision after 90-day period

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(4) Aliens imprisoned, arrested, or on parole, supervised release, or probation

(A) In general

Except as provided in section 343(a) of the Public Health Service Act (42 U.S.C. 259(a)) and paragraph (2), the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) Exception for removal of nonviolent offenders prior to completion of sentence of imprisonment

The Attorney General is authorized to remove an alien in accordance with applicable procedures under this Act before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101(a)(43)(B), (C), (E), (I), or (L) of this title and (II) the removal of the alien is appropriate and in the best interest of the United States; or

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 1101(a)(43)(C) or (E) of this title), (II) the removal is appropriate and in the best interest of the State,

and (III) submits a written request to the Attorney General that such alien be so removed.

(C) Notice

Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

(D) No private right

No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(5) Reinstatement of removal orders against aliens illegally reentering

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

(6) Inadmissible or criminal aliens

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

(7) Employment authorization

No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—

(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or

(B) the removal of the alien is otherwise impracticable or contrary to the public interest.

(b) Countries to which aliens may be removed

(1) Aliens arriving at the United States

Subject to paragraph (3)—

(A) In general

Except as provided by subparagraphs (B) and (C), an alien who arrives at the United States and with respect to whom proceedings under section 1229a of this title were initiated at the time of such alien's arrival shall be removed to the country in which the alien boarded the vessel or aircraft on which the alien arrived in the United States.

(B) Travel from contiguous territory

If the alien boarded the vessel or aircraft on which the alien arrived in the United States in a foreign territory contiguous to the United States, an island adjacent to the United States, or an island adjacent to a foreign territory contiguous to the United States, and the alien is not a native, citizen, subject, or national of, or does not reside in, the territory or island, removal shall be to the country in which the alien boarded the vessel that transported the alien to the territory or island.

(C) Alternative countries

If the government of the country designated in subparagraph (A) or (B) is unwilling to accept the alien into that country's territory, removal shall be to any of the following countries, as directed by the Attorney General:

(i) The country of which the alien is a citizen, subject, or national.

(ii) The country in which the alien was born.

(iii) The country in which the alien has a residence.

(iv) A country with a government that will accept the alien into the country's territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible.

(2) Other aliens

Subject to paragraph (3)—

(A) Selection of country by alien

Except as otherwise provided in this paragraph—

(i) any alien not described in paragraph (1) who has been ordered removed may designate one

country to which the alien wants to be removed, and

(ii) the Attorney General shall remove the alien to the country the alien so designates.

(B) Limitation on designation

An alien may designate under subparagraph (A)(i) a foreign territory contiguous to the United States, an adjacent island, or an island adjacent to a foreign territory contiguous to the United States as the place to which the alien is to be removed only if the alien is a native, citizen, subject, or national of, or has resided in, that designated territory or island.

(C) Disregarding designation

The Attorney General may disregard a designation under subparagraph (A)(i) if—

(i) the alien fails to designate a country promptly;

(ii) the government of the country does not inform the Attorney General finally, within 30 days after the date the Attorney General first inquires, whether the government will accept the alien into the country;

(iii) the government of the country is not willing to accept the alien into the country; or

(iv) the Attorney General decides that removing the alien to the country is prejudicial to the United States.

(D) Alternative country

If an alien is not removed to a country designated under subparagraph (A)(i), the Attorney General shall remove the alien to a country of which the alien is a subject, national, or citizen unless the government of the country—

(i) does not inform the Attorney General or the alien finally, within 30 days after the date the Attorney General first inquires or within another period of time the Attorney General decides is reasonable, whether the government will accept the alien into the country; or

(ii) is not willing to accept the alien into the country.

(E) Additional removal countries

If an alien is not removed to a country under the previous subparagraphs of this paragraph, the Attorney General shall remove the alien to any of the following countries:

(i) The country from which the alien was admitted to the United States.

(ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.

(iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.

(iv) The country in which the alien was born.

(v) The country that had sovereignty over the alien's birthplace when the alien was born.

(vi) The country in which the alien's birthplace is located when the alien is ordered removed.

(vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

(F) Removal country when United States is at war

When the United States is at war and the Attorney General decides that it is impracticable,

inadvisable, inconvenient, or impossible to remove an alien under this subsection because of the war, the Attorney General may remove the alien—

(i) to the country that is host to a government in exile of the country of which the alien is a citizen or subject if the government of the host country will permit the alien's entry; or

(ii) if the recognized government of the country of which the alien is a citizen or subject is not in exile, to a country, or a political or territorial subdivision of a country, that is very near the country of which the alien is a citizen or subject, or, with the consent of the government of the country of which the alien is a citizen or subject, to another country.

(3) Restriction on removal to a country where alien's life or freedom would be threatened

(A) In general

Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

(B) Exception

Subparagraph (A) does not apply to an alien deportable under section 1227(a)(4)(D) of this title or if the Attorney General decides that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime is a danger to the community of the United States;

(iii) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not

preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime. For purposes of clause (iv), an alien who is described in section 1227(a)(4)(B) of this title shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.

(c) Removal of aliens arriving at port of entry

(1) Vessels and aircraft

An alien arriving at a port of entry of the United States who is ordered removed either without a hearing under section 1225(b)(1) or 1225(c) of this title or pursuant to proceedings under section 1229a of this title initiated at the time of such alien's arrival shall be removed immediately on a vessel or aircraft owned by the owner of the vessel or aircraft on which the alien arrived in the United States, unless—

(A) it is impracticable to remove the alien on one of those vessels or aircraft within a reasonable time, or

(B) the alien is a stowaway—

(i) who has been ordered removed in accordance with section 1225(a)(1) of this title,

(ii) who has requested asylum, and

(iii) whose application has not been adjudicated or whose asylum application has been denied but who has not exhausted all appeal rights.

(2) Stay of removal

(A) In general

The Attorney General may stay the removal of an alien under this subsection if the Attorney General decides that–

(i) immediate removal is not practicable or proper; or

(ii) the alien is needed to testify in the prosecution of a person for a violation of a law of the United States or of any State.

(B) Payment of detention costs

During the period an alien is detained because of a stay of removal under subparagraph (A)(ii), the Attorney General may pay from the appropriation "Immigration and Naturalization Service–Salaries and Expenses" –

(i) the cost of maintenance of the alien; and

(ii) a witness fee of $ 1 a day.

(C) Release during stay

The Attorney General may release an alien whose removal is stayed under subparagraph (A)(ii) on—

(i) the alien's filing a bond of at least $500 with security approved by the Attorney General;

(ii) condition that the alien appear when required as a witness and for removal; and

(iii) other conditions the Attorney General may prescribe.

(3) Costs of detention and maintenance pending removal

(A) In general

Except as provided in subparagraph (B) and subsection (d) of this section, an owner of a vessel or aircraft bringing an alien to the United States shall pay the costs of detaining and maintaining the alien—

(i) while the alien is detained under subsection (d)(1) of this section, and

(ii) in the case of an alien who is a stowaway, while the alien is being detained pursuant to—

(I) subsection (d)(2)(A) or (d)(2)(B)(i) of this section,

(II) subsection (d)(2)(B)(ii) or (iii) of this section for the period of time reasonably necessary for the owner to arrange for repatriation or removal of the stowaway, including obtaining necessary travel documents, but not to extend beyond the date on which it is ascertained that such travel documents cannot be obtained from the country to which the stowaway is to be returned, or

(III) section 1225(b)(1)(B)(ii) of this title, for a period not to exceed 15 days (excluding Saturdays, Sundays, and holidays) commencing on the first such day which begins on the earlier of 72 hours after the time of the initial presentation of the stowaway for inspection or at the time the stowaway is determined to have a credible fear of persecution.

(B) Nonapplication

Subparagraph (A) shall not apply if—

(i) the alien is a crewmember;

(ii) the alien has an immigrant visa;

(iii) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States and applies for admission not later than 120 days after the date the visa or documentation was issued;

(iv) the alien has a reentry permit and applies for admission not later than 120 days after the date of the alien's last inspection and admission;

(v)(I) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States or a reentry permit;

(II) the alien applies for admission more than 120 days after the date the visa or documentation was issued or after the date of the last inspection and admission under the reentry permit; and

(III) the owner of the vessel or aircraft satisfies the Attorney General that the existence of the condition relating to inadmissibility could not have been discovered by exercising reasonable care before the alien boarded the vessel or aircraft; or

(vi) the individual claims to be a national of the United States and has a United States passport.

(d) Requirements of persons providing transportation

(1) Removal at time of arrival

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States shall—

(A) receive an alien back on the vessel or aircraft or another vessel or aircraft owned or operated by the same interests if the alien is ordered removed under this part; and

(B) take the alien to the foreign country to which the alien is ordered removed.

(2) Alien stowaways

An owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft arriving in the United States with an alien stowaway—

(A) shall detain the alien on board the vessel or aircraft, or at such place as the Attorney General shall designate, until completion of the inspection of the alien by an immigration officer;

(B) may not permit the stowaway to land in the United States, except pursuant to regulations of the Attorney General temporarily –

(i) for medical treatment,

(ii) for detention of the stowaway by the Attorney General, or

(iii) for departure or removal of the stowaway; and

(C) if ordered by an immigration officer, shall remove the stowaway on the vessel or aircraft or on another vessel or aircraft.

The Attorney General shall grant a timely request to remove the stowaway under subparagraph (C) on a vessel or aircraft other than that on which the stowaway arrived if the requester has obtained any travel documents necessary for departure or repatriation of the stowaway and removal of the stowaway will not be unreasonably delayed.

(3) Removal upon order

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel, aircraft, or other transportation line shall comply with an order of the Attorney General to take on board, guard safely, and transport to the destination specified any alien ordered to be removed under this Act.

(e) Payment of expenses of removal

(1) Costs of removal at time of arrival

In the case of an alien who is a stowaway or who is ordered removed either without a hearing under section 1225(a)(1) or 1225(c) of this title or pursuant to proceedings under section 1229a of this title initiated at the time of such alien's arrival, the owner of the vessel or aircraft (if any) on which the alien arrived in the United States shall pay the transportation cost of removing the alien. If removal is on a vessel or aircraft not owned by the owner of the vessel or aircraft on which the alien arrived in the United States, the Attorney General may—

(A) pay the cost from the appropriation "Immigration and Naturalization Service–Salaries and Expenses"; and

(B) recover the amount of the cost in a civil action from the owner, agent, or consignee of the vessel or aircraft (if any) on which the alien arrived in the United States.

(2) Costs of removal to port of removal for aliens admitted or permitted to land

In the case of an alien who has been admitted or permitted to land and is ordered removed, the cost (if any) of removal of the alien to the port of removal shall

be at the expense of the appropriation for the enforcement of this Chapter.

(3) Costs of removal from port of removal for aliens admitted or permitted to land

(A) Through appropriation

Except as provided in subparagraph (B), in the case of an alien who has been admitted or permitted to land and is ordered removed, the cost (if any) of removal of the alien from the port of removal shall be at the expense of the appropriation for the enforcement of this Chapter.

(B) Through owner

(i) In general

In the case of an alien described in clause (ii), the cost of removal of the alien from the port of removal may be charged to any owner of the vessel, aircraft, or other transportation line by which the alien came to the United States.

(ii) Aliens described

An alien described in this clause is an alien who—

(I) is admitted to the United States (other than lawfully admitted for permanent residence) and is ordered

removed within 5 years of the date of admission based on a ground that existed before or at the time of admission, or

(II) is an alien crewman permitted to land temporarily under section 1282 of this title and is ordered removed within 5 years of the date of landing.

(C) Costs of removal of certain aliens granted voluntary departure

In the case of an alien who has been granted voluntary departure under section 1229c of this title and who is financially unable to depart at the alien's own expense and whose removal the Attorney General deems to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this Chapter.

(f) Aliens requiring personal care during removal

(1) In general

If the Attorney General believes that an alien being removed requires personal care because of the alien's mental or physical condition, the Attorney General may employ a suitable person for that purpose who shall accompany and care for the alien until the alien arrives at the final destination.

(2) Costs

The costs of providing the service described in paragraph (1) shall be defrayed in the same manner as the expense of removing the accompanied alien is defrayed under this section.

(g) Places of detention

(1) In general

The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal. When United States Government facilities are unavailable or facilities adapted or suitably located for detention are unavailable for rental, the Attorney General may expend from the appropriation "Immigration and Naturalization Service—Salaries and Expenses", without regard to section 5 of Title 41, amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities (including living quarters for immigration officers if not otherwise available) necessary for detention.

(2) Detention facilities of the immigration and naturalization service

Prior to initiating any project for the construction of any new detention facility for the Service, the Commissioner shall consider the availability for purchase or lease of any

existing prison, jail, detention center, or other comparable facility suitable for such use.

(h) Statutory construction

Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(i) Incarceration

(1) If the chief executive officer of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the incarceration of an undocumented criminal alien submits a written request to the Attorney General, the Attorney General shall, as determined by the Attorney General—

(A) enter into a contractual arrangement which provides for compensation to the State or a political subdivision of the State, as may be appropriate, with respect to the incarceration of the undocumented criminal alien; or

(B) take the undocumented criminal alien into the custody of the Federal Government and incarcerate the alien.

(2) Compensation under paragraph (1)(A) shall be the average cost of incarceration of a prisoner in the relevant State as determined by the Attorney General.

(3) For purposes of this subsection, the term "undocumented criminal alien" means an alien who—

(A) has been convicted of a felony or two or more misdemeanors; and

(B) (i) entered the United States without inspection or at any time or place other than as designated by the Attorney General;

(ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State or a political subdivision of the State; or

(iii) was admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status.

(4) (A) In carrying out paragraph (1), the Attorney General shall give priority to the Federal incarceration of undocumented criminal aliens who have committed aggravated felonies.

(B) The Attorney General shall ensure that undocumented criminal aliens incarcerated in Federal facilities pursuant to this subsection are held in facilities which provide a level of security appropriate to the crimes for which they were convicted.

(5) There are authorized to be appropriated such sums as may be necessary to carry out this subsection in fiscal years 2003 and 2004.

(6) To the extent of available appropriations, funds otherwise made available under this section with respect to a State (or political subdivision, including a municipality) for incarceration of an undocumented criminal alien may, at the discretion of the recipient of the funds, be used for the costs of imprisonment of such alien in a State, local, or municipal prison or jail.

(June 27, 1952, c. 477, Title II, ch. 4, § 241, as added and amended Sept. 30, 1996, P.L. 104-208, Div. C, Title III, §§ 305(a)(3), 306(a)(1), 328(a)(1), 110 Stat. 3009-598, 3009-607, 3009-630.)